

FIRST REGULAR SESSION

# SENATE BILL NO. 311

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 4, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1627S.011

## AN ACT

To repeal section 434.100, RSMo, and to enact in lieu thereof one new section relating to the treatment of indemnification and hold harmless clauses within construction work contracts.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 434.100, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 434.100, to read as follows:

434.100. 1. Except as provided in subsection 2 of this section, in any  
2 contract or agreement for public or private construction work, a [party's]  
3 covenant, promise or agreement to indemnify [or], hold harmless [another person  
4 from that person's own], **insure or defend a party against liability, claims,  
5 damages, losses, or expenses, including attorney's fees, that are caused  
6 by the negligence or wrongdoing of that party or that party's employees,  
7 agents, subcontractors, or others for whom that party is responsible,**  
8 negligence or wrongdoing is void as against public policy and wholly  
9 unenforceable. **For purposes of this subsection, the term "party" shall  
10 include the party's officers, employees or agents.**

11 2. The provisions of subsection 1 of this section shall not apply to:

12 (1) A party's covenant, promise or agreement to indemnify [or], hold  
13 harmless, **insure, or defend** another person from the party's own negligence or  
14 wrongdoing or the negligence or wrongdoing of the party's subcontractors and  
15 suppliers of any tier **and the party's officers, employees, and agents;**

16 (2) A party's promise to [cause another person or entity to be covered as  
17 an insured or additional insured in an insurance contract] **purchase a project-  
18 specific insurance policy, including an owner's or contractor's**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 **protective liability insurance, project management protective liability**  
20 **insurance, or builder's risk insurance;**

21 (3) A contract or agreement between state agencies or political  
22 subdivisions or between such governmental agencies;

23 (4) A contract or agreement between a private person and such  
24 governmental entities for the use or operation of public property or a public  
25 facility;

26 (5) A contract or agreement with the owner of the public property for the  
27 construction, use, maintenance or operation of a private facility when it is located  
28 on such public property;

29 (6) A permit, authorization or contract with such governmental entities  
30 for the movement of property on the public highways, roads or streets of this  
31 state or any political subdivision;

32 (7) Construction bonds, or insurance contracts or agreements; **or**

33 (8) [An agreement containing a party's promise to indemnify, defend or  
34 hold harmless another person, if the agreement also requires the party to obtain  
35 specified limits of insurance to insure the indemnity obligation and the party had  
36 the opportunity to recover the cost of the required insurance in its contract price;  
37 provided, however, that in such case the party's liability under the indemnity  
38 obligation shall be limited to the coverage and limits of the required insurance;  
39 or

40 (9)] Railroads regulated by the Federal Railroad Administration.

41 3. For the purposes of this section, "construction work" shall include, but  
42 not be limited to, the construction, **reconstruction, renovation,** alteration,  
43 maintenance or repair of any [building, structure, highway, bridge, viaduct, or  
44 pipeline, or] **public or private real property, buildings, structures,**  
45 **improvements, highways, streets, bridges, viaducts, shafts, wells, water**  
46 **or sewer systems, gas or other distribution systems, pipelines, or**  
47 **appliances, including** demolition, moving or excavation connected therewith,  
48 and shall include the furnishing of surveying, design, engineering, **supervision,**  
49 **testing, observation, development,** planning or management services, or  
50 labor, materials or equipment, in connection with such work, **but shall not**  
51 **include any such work on utility poles or transmission lines utilized by**  
52 **more than one municipal utility, utility regulated under chapter 386,**  
53 **RSMo, rural electric cooperative under chapter 394, RSMo, or any**  
54 **telecommunications, cable television, or other similar provider.**

55           4. As used in this section, "indemnify" or "hold harmless" includes  
56 any requirement to name the indemnified party as an additional  
57 insured in the indemnitor's insurance coverage for the purpose of  
58 providing an indemnification for any liability not otherwise allowed in  
59 this section.

60           5. All provisions, covenants, or clauses, in a construction work  
61 contract, pursuant to which a substantial portion of the construction  
62 work is to be performed in the state of Missouri, shall be made subject  
63 to the laws of this state. Any litigation, arbitration, or other dispute  
64 resolution proceeding arising from the contract shall be conducted in  
65 this state. Any provision, covenant, or clause, in a construction work  
66 contract that conflicts with the provisions of this section shall be void  
67 and unenforceable.

68           6. The provisions of this section shall apply only to contracts or  
69 agreements entered into after August 28, [1999] 2009.

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Bill

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